No. 83-119

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

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In the Matter of

WILLIAM HENRY EDWARDS,

Petitioner.

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ON PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF

THE STATE OF SOUTH CAROLINA

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# PETITIONER'S REPLY BRIEF

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William Henry Edwards,

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# PETITIONER'S REPLY BRIEF

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Respondent has contended that this Court is without jurisdiction to grant the petition.

Petitioner's case is fraught with flagrant constitutional violations and fundamental errors. In addition, Petitioner raises highly significant questions. Petitioner maintains that these considerations are sufficient to confer jurisdiction. Respondent's contentions are frivolous.

## QUESTIONS ONE AND TWO

The rule on confidentiality, as a prior restraint, comes to this Court "presumptively unconstitutional." Pittsburgh Press Co. v. Human Rel. Comm'n., 413 U.S. 376, 396 (1973)(Burger, C. J., dissenting). The rule, as construed by the South Carolina Supreme Court, allows for the exercise of arbitrary and capricious discretion in the consideration of a request for waiver. The rule's thrust is widespread suppression of speech, although it provides for a subsequent sanction. The rule dictates closed proceedings and secrecy. The interests sought to be protected are minimal: there is no jury to bias. The rule is sweeping, overbroad, and - Petitioner submits - patently and flagrantly unconstitutional.

Petitioner submits the rule's nature permits the Court to review these questions.

In the area of the First Amendment, the rules of standing have been relaxed. A defendant whose own speech is unprotected may challenge the constitutionality of a statute which purports to prohibit protected speech. Young v. American Mini Theatres, Inc., 427 U.S. 50, 60 (1976). This

exception has been justified because "the very existence of some statutes may cause persons before the Court to refrain from engaging in constitutionally protected speech..." Id., at 61.

Another First Amendment exception to traditional rules of standing was enunciated in Cox Broadcasting Corporation v. Cohn, 420 U.S. 469 (1965). There, the relaxation of the finality requirement of 28 U.S.C.A. 1257 was justified because it "would be intolerable to leave unanswered, ... an important question of freedom of the press...; (it) would "leave the press... operating in the shadow of ... a statute the constitutionality of which is in serious doubt...". Id., at 487.

The rule on confidentiality is a permanent state court rule. The deprivation of rights it induces are continuing. (The rule in fact still operates on Petitioner: he is permanently restrained from disclosing any information pertaining to his proceeding.)

For the above reasons, Petitioner submits it would be intolerable not to relax standing

requirements to permit review of this rule.

In Webb v. Webb, 451 U.S. 493 (1981), the Court summarized the policy considerations underlying the requirement that federal questions must first be raised in the state courts. Of paramount importance was the principle of comity enunciated in Younger v. Harris, 401 U.S. 37, 44 (1971).

In Younger, however, the Court said that if a statute was "flagrantly and patently" unconstitutional, the doctrine of comity would not bar Federal intervention. Id., at 54-55.

Petitioner submits that the nature of the rule on confidentiality waives this interest in comity.

Additionally, Petitioner submits granting review of the rule on confidentiality to invalidate it as an unconstitutional prior restraint, dictates the granting of review of the speech and closed proceedings questions. Due to the wording of the rule, the three separate questions are inextricably intertwined.

Petitioner proffers In re Oliver, 333

U.S. 257 (1948) as precedent that the right to a public hearing is unwaiverable. In that case, the issue concerning closed proceedings had not been properly raised below, but was decided nonetheless.

Petitioner proffers Terminiello v. City of Chicago, 337 U.S. 1 (1949), as precedent for bestowing jurisdiction upon the Court to hear question one.

Petitioner does not admit that he did not raise his Federal constitutional questions below. On the contrary, Petitioner was precluded from raising them. Petitioner maintains though that the questions were raised implicitly.

Until the hearing, there were no Federal questions to raise. Petitioner had requested the opening of the proceedings in accordance with Rule 20 (A)(1) of the rule on confidentiality. At the hearing, the Chairman of the Board testified this rule authorized a discretionary request. Petitioner disputed this insisting Chairman's interpretation was

erroneous as it would deprive him of his right to a public proceeding. The panel found against Petitioner. Petitioner excepted to this finding before the Executive Committee. The Committee concurred in the finding below.

Petitioner kept insisting he had the right under the court rule to public proceedings and that the construction was erroneous, because he felt such a right was a basic due process guarantee under the Federal Constitution.

Implicit in Petitioner's insistence on the erroneousness of the construction was the argument that such a construction could not be upheld as it would violate federal constitutional guarantees. The legislature has no say in the creation or implementation of Supreme Court Rules in South Carolina and the construction of these rules would be readily known to the Court and its staff.

Petitioner notes the aforesaid stages of his proceeding were held in a tribunal mani-

festly incompetent. (See Petitioner's question three.) Additionally, the fact that the State Supreme Court has original jurisdiction of disciplinary proceedings renders any failure to raise a constitutional claim below meaningless.

Subsequently, the case was called for oral argument before the State Supreme Court. Such review is discretionary with the Court. (See Appendix A .)

Attorney Campbell, called with Petitioner, spoke for approximately five minutes. The Court then allowed Petitioner to speak. After approximately two to three minutes, Petitioner was informed his time was up. (A transcribed record is available of this proceeding.)

Petitioner had planned on discussing his written exceptions and then on raising a host of Federal constitutional arguments as to the effect of the Court's sustaining the rulings below: that he would be unconstitutionally denied the rights of due process and equal

protection under the Fourteenth Amendment to the United States Constitution.

Such arguments would have been permitted as the court has original jurisdiction of the matter.

By truncating Petitioner's presentation, the State Supreme Court arbitrarily deprived Petitioner of the opportunity to present his constitutional claims. This deprivation is not uniformly applied to all persons. Many litigants enjoy the benefit of plenary oral argument.

Petitioner submits that under Hathorn v. Lovorn, _____ U.S. _____, 102 S. Ct. 2421 (1982), the State Supreme Court's arbitrary action renders his failure to expressly present his claims inadequate as a state procedural ground barring review.

Petitioner was precluded from presenting his issues to the State Supreme Court in a petition for rehearing. Such petitions must be presented within ten days of the filing

of the Supreme Court's opinion. (See Appendix A.) Petitioner did not receive his opinion until after the ten days had expired. The opinion was initially sent to the wrong address, in spite of the fact Petitioner's correct address is on file.

The opinion was sent return receipt requested. Respondent has the dated receipt in his files.

Petitioner submits as another plain error conferring jurisdiction upon the Court, the ex post facto construction of the rule on confidentiality and its application to him. Bouie v. City of Columbia, 378 U.S. 347 (1964) holds that such an unforeseen judicial construction applied retroactively violates due process of law.

## QUESTIONS THREE AND FOUR

Under the Supreme Court Rules, the Court may notice a plain error. The failure to raise such errors below does not constitute a bar to the Court's jurisdiction. Plain errors are errors that "seriouly affect the fairness,

integrity, or public reputation of judicial proceedings." Silber v. United States, 370 U.S. 717, 718 (1962).

Petitioner submits that the concentration of power in one body and more particularly, in one man, "violates fundamental notions of justice in civilized society." In re Oliver, supra at 280 (Rutledge, J., concurring). The right to a competent tribunal cannot be waived. A.B.A. Standards, Post-Conviction Remedies 36 (1968).

Petitioner reiterates that the failure of Petitioner's charging papers to apprise him of what he had to meet constitutes plain error. Silber, supra.

A written document serves as irrebuttable proof proper notice was given. Notice given by word of mouth is subject to confusion, distortion, and memory deficiencies.

QUESTION FIVE

Petitioner herein repeats those procedural arguments contained under questions one and two that are relevant to this question and incor-

porates them by reference.

At oral argument, Petitioner had been prepared to argue that the effect of the holdings of the proceedings below was to unconstitutionally deny him of the rights of due process and equal protection under the Fourteenth Amendment to the United States Constitution.

These arguments were raised implicitly by Petitioner in his continued insistence on the right to proceed with his libel and slander actions.

A question interfacing with question five warrants notice by this Court. When the law clerk repeated the slanderous material to his employer, who then repeated it to Attorney Harper and others, communication forming an independent basis upon which the actions were sustainable occurred. This communication was entirely unprivileged. Petitioner raised this point throughout his proceedings. (Answer: Brief in Opposition at 21-22; Exceptions: Appendix B.) The evidence supports this

claim. (See Panel Report: Petition at C-7 and C-8.)

As in Vachon v. New Hampshire, 414 U.S. 478 (1974), the complete disregard of the evidence on a crucial point constitutes a patent denial of due process.

## CONCLUSION

The above fundamental constitutional violations are concentrated in a single proceeding. Petitioner has raised significant and substantial questions. No sufficient jurisdictional impediment exists to defeat the Court's power to review this case.

For the foregoing reasons, Petitioner respectfully submits that this Court has jurisdiction to grant the petition and requests that the writ issue.

Respectfully submitted,

John R. Harper, II
Counsel of Record

Sandi Perry
Legal Researcher

## RULES OF COURT

B. Rule on Disciplinary Procedure

17. Review by Court

Upon failure of the Respondent to file exceptions to the Panel Report within the time hereinbefore prescribed, or after consideration of the return and such briefs as may have been filed in support of and in opposition to the same, and after hearing argument (if this Court shall desire to hear argument thereabout) this Court shall enter such Order upon the matter as it may find proper...

Appendix B

Rule 17

SUPREME COURT

Rule 17

Remittitur; petitions for rehearing

Section 1. The remittitur shall contain a copy of the judgment of the Court, shall be sealed with the seal and signed by the Clerk of the Court, and shall not be sent to the Court below until ten days have elapsed (the day of filing being excluded) since the filing of the opinion, order, judgment or decree of the Court unless otherwise ordered by the Court.

Section 2. Petitions for rehearing must be filed before the judgment of this Court has been remitted to the Court below...

Appendix C

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|---|---|
| State of South Carolina<br>County of Richland<br><br>IN THE MATTER OF:<br><br>William H. Edwards, Sr. and Larkin v. Campbell,<br><br>Respondents. | IN THE SUPREME COURT<br><br>E X C E P T I O N S |

8. The Commissioners erred when they found in their Findings of Fact that Mr. Harper called Respondent Edwards and indicated that a complaint was going to be filed against Respondent Edwards by Mr. Ward for the assault, the error being that Mr. Harper testified that he called Respondent Edwards and advised him that Attorney Roy Bates had called him and told him that a complaint was going to be filed against Respondent Edwards by his law clerk for failing to accept the letters and for assaulting his law clerk.

9. The Commissioners erred when they found in their Findings of Fact that the Civil Complaint and Criminal Complaint were based solely on a letter sent by Mr. Ward to the Grievance Committee, the

error being that the Respondent Edwards testified that the matter was brought to his attention by Attorney John R. Harper, John Gibson and John Gibson's daughter prior to February 5 1982.

16. The Commissioners erred when they found in their Recommendations that Respondent Edwards initiated and knowingly maintained both the civil and criminal actions against Mr. Ward when the claims were unwarranted under existing law and when it was obvious that such actions were serving merely to harass or maliciously injure another in specific violation of DR7-102(A)(1 and 2), the error being that Respondent Edwards testified that the allegations of Tobias Ward were known to him prior to the filing of the Complaint and that Section 16-7-150 of the South Carolina Code gave Respondent Edwards the right to bring the criminal charges even if Mr. Tobias Ward had not filed his complaint with the Grievance Board.

17. The Commissioners erred when they found in their Recommendations that the panel likewise finds persuasive that the Respondent Edwards'

justification for the initiation of these lawsuits was inferentially, if not specifically retaliatory in nature, the error being that Respondent Edwards could have brought the lawsuits independent of the letter to the Grievance Board. Respondent Edwards testified that the complaint to the Grievance Board was retaliatory because he would not allow Mr. John Gibson to get out his contract and that Mr. John Gibson did not want Black lawyers to open an office in his community. Respondent Edwards testified that he did not believe that the disciplinary Rules should not be used by another lawyer for retaliation.

No. 83-119

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| WILLIAM HENRY EDWARDS, | ) | **NOTARIZED** |
| | ) | **STATEMENT** |
| Petitioner. | ) | |
| | ) | |

John R. Harper, II, Esquire, being duly sworn, deposes and states:

1. That he is an attorney-at-law, duly licensed by the State of South Carolina.

2. That he is a member of the Bar of this Honorable Court and was admitted to aforesaid Bar on August 21, 1980.

3. That on October 20, 1983, he mailed forty (40) copies of the reply brief to the Honorable Clerk of the Supreme Court of the United States, by depositing aforesaid copies in the main United States post office in Columbia, S.C. with first-class postage pre-paid and properly addressed to the Clerk of

Court within the time allowed for filing.

4. That this statement is made and filed in accordance with Rule 28.2 of the Rules of the Supreme Court of the United States.

John R. Harper, II

John R. Harper, II
Post Office Box 843
Columbia, S.C. 29202
(803) 799-2798

October 20th, 1983

Columbia, South Carolina

Sworn to before me this

20th day of October, 1983

Larkin V. Campbell

Notary Public for South Carolina

My Commission Expires: 3/17/90

No. 83-119

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

| | |
|---|---|
| In the Matter of<br><br>WILLIAM HENRY EDWARDS,<br><br>Petitioner. | NOTARIZED STATEMENT |

John R. Harper, II, Esquire, being duly sworn, deposes and states:

1. That he is an attorney-at-law, duly licensed by the State of South Carolina.

2. That he is a member of the Bar of this Honorable Court and was admitted to aforesaid Bar on August 21, 1980.

3. That on October 20, 1983, he mailed three (3) copies of the reply brief to the Honorable T. Travis Medlock, lead counsel for the complainant below, by depositing aforesaid

copies in a mailbox located in the main United States post office in Columbia, South Carolina, with first-class postage prepaid and properly addressed to the Honorable T. Travis Medlock within the time allowed for filing.

4. That this statement is made and filed in accordance with Rules 28.3 and 28.5 of the Rules of the Supreme Court of the United States.

5. That all parties required to be served in this case have been served to wit:

The Honorable T. Travis Medlock
Attorney General of South Carolina
Post Office Box 11548
Columbia, South Carolina 29211

John R. Harper, II

Post Office Box 843
Columbia, S. C. 29202
(803) 799-2798

October 20th, 1983

Columbia, South Carolina

Sworn To Before Me This

20th Day of October, 1983.

Larkin V. Campbell

Notary Public for South Carolina

My Commission Expires: 3/17/90